

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EMAD TADROS, M.D.,

Plaintiff,

vs.

AMERICAN COLLEGE OF FORENSIC
EXAMINERS INSTITUTE; AMERICAN
COLLEGE OF FORENSIC EXAMINERS
INTERNATIONAL; and ROBERT
O'BLOCK,

Defendants.

CASE NO. 11-CV-2622-LAB-POR

**ORDER ON MOTION TO
TRANSFER VENUE**

Two motions are pending before the Court in this case: Defendants' motion to transfer venue to the Central District of Missouri and Defendants' motion to dismiss. The Court will consider the venue motion first, and the motion to dismiss if necessary.

I. Background

Emad Tadros, a psychiatrist at Scripps Mercy Behavioral Health Services in San Diego, was involved in a custody dispute in San Diego Superior Court. Dr. Tadros hired Steven Doyne, a California-based psychologist, to conduct a custody evaluation, presumably expecting that Dr. Doyne's evaluation would serve Dr. Tadros' cause.¹ It turned out not to,

¹ The record is a little unclear on this point. Dr. Tadros claims he hired Dr. Doyne himself as a kind of expert witness. (See FAC ¶ 15.) Court records suggest, however, that Dr. Tadros agreed that Dr. Doyne would serve as an evaluator in his custody dispute. (See Dkt. No 6-3, Ex. 1.) If the latter is closer to the truth, Dr. Doyne's role was closer to that of

1 and Dr. Tadros sued Dr. Doyne for being incompetent and falsifying his credentials. The
 2 lawsuit was stricken on anti-SLAPP grounds, and Dr. Tadros was ordered to reimburse Dr.
 3 Doyne for \$80,000 in costs and approximately \$6,000 in attorney's fees. (See Dkt. No. 6-3,
 4 Ex. 2.) Dr. Tadros paid up. (See FAC Ex. B.)

5 Dr. Doyne is a member of the American College of Forensic Examiners Institute, one
 6 of the Defendants in this case, and he lists this membership among his professional
 7 credentials. After Dr. Tadros' lawsuit against Dr. Doyne failed, he sued ACFEI in Los
 8 Angeles Superior Court, essentially for concealing its credentialing process and misleading
 9 him and the San Diego Superior Court as to Dr. Doyne's true qualifications. This lawsuit
 10 was, without a doubt, a collateral attack on the judgment entered against Dr. Tadros in his
 11 case against Dr. Doyne. Dr. Tadros voluntarily dismissed this case on September 13, 2011.²

12 In October of 2011, ACFEI brought a defamation lawsuit against Dr. Tadros in state
 13 court in Missouri. Dr. Tadros removed the case to the Western District of Missouri, which
 14 then dismissed it for lack of personal jurisdiction over Dr. Tadros. (See Dkt. No. 18.) The
 15 court suggested that the Southern District of California, not the Western District of Missouri,
 16 would be the appropriate venue for ACFEI's defamation lawsuit, but really the court's
 17 decision had to do with its own lack of jurisdiction over Dr. Tadros. Presumably, that is why
 18 it dismissed the case without prejudice rather than transfer it here. This is an important
 19 point, because Dr. Tadros asks the Court to take judicial notice of the dismissal of ACFEI's
 20 lawsuit in the Western District of Missouri as grounds for denying ACFEI's motion to transfer
 21 this case to the Western District of Missouri. That argument has less force considering that
 22 the dismissal had more to do with jurisdiction than venue.

23 After receiving ACFEI's defamation lawsuit, Dr. Tadros again sued ACFEI, only now
 24 in federal court in San Diego rather than state court in Los Angeles. ACFEI argues that this
 25 lawsuit is essentially the same lawsuit that Dr. Tadros previously filed against ACFEI.

26 a neutral arbitrator than Dr. Tadros' own witness.
 27

28 ² This is the date given by Defendants, but as the Court reads the record Dr. Tadros
 contacted ACFEI's counsel about dismissing his case on July 21, 2011. (FAC, Ex. C.)
 Perhaps it wasn't until September 13, 2011 that the dismissal was official.

1 Indeed, in this case, Dr. Tadros accuses ACFEI of having substandard credentialing
2 standards, of misrepresenting Dr. Doyne's actual qualifications, and of refusing Dr. Tadros'
3 many requests for information relating to Dr. Doyne's credentialing.

4 **II. Jurisdiction**

5 While Defendants ask the Court to transfer this case to the Central District of
6 Missouri, they also casually assert that the Court lacks personal jurisdiction over them. They
7 look past this issue, however, simply because "the more efficient procedure is to transfer this
8 action to the Central District of Missouri under 28 U.S.C. § 1404(a)." (Dkt. No. 6-1 at 6.)
9 Defendants are right that *if* the Court lacks personal jurisdiction over the Defendants, it can
10 still transfer the case. See *Fogarty v. USA Truck, Inc.*, 242 Fed.Appx. 152, 154 (5th Cir.
11 2007); *Fort Knox Music Inc. v. Baptiste*, 257 F.3d 108, 1011 (2d Cir. 2001). If Defendants
12 are right, though, and Dr. Tadros "is a serial litigant, waging bizarre and multifaceted
13 campaign against imagined enemies," it would seem too much of a favor to Dr. Tadros to
14 help him prosecute this case elsewhere, rather than dismiss it for lack of jurisdiction and
15 force him to re-file. (See Dkt. No. 6-1 at 3.) The Court therefore isn't inclined to look past
16 its jurisdiction over Defendants and straight to the question of transfer under 28 U.S.C. §
17 1404(a).

18 **A. Jurisdictional Standards**

19 Personal jurisdiction over a defendant is proper if it complies with a state's long-arm
20 statute and constitutional due process standards. *Fireman's Fund Ins. Co. v. Nat'l Bank of*
21 *Cooperatives*, 103 F.3d 888, 893 (9th Cir. 1996). California's long-arm statute is co-
22 extensive with constitutional standards, however, so it is only the latter that matter here. See
23 *Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008). "For a court to exercise
24 personal jurisdiction over a nonresident defendant, that defendant must have at least
25 'minimum contacts' with the relevant forum such that the exercise of jurisdiction 'does not
26 offend traditional notions of fair play and substantial justice.'" *Schwarzenegger v. Fred*
27 *Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004) (quoting *Int'l Shoe Co. v. Washington*,
28 326 U.S. 310, 316 (1945)).

1 Personal jurisdiction may be either specific or general. The Court will say something
 2 about each.

3 **1. Specific Personal Jurisdiction**

4 Three conditions must be satisfied to trigger the Court's specific jurisdiction over a
 5 non-resident defendant.

6 (1) The non-resident defendant must purposefully direct his
 7 activities or consummate some transaction with the forum or
 8 resident thereof; or perform some act by which he purposefully
 9 avails himself of the privilege of conducting activities in the
 10 forum, thereby invoking the benefits and protections of its laws;

11 (2) the claim must be one which arises out of or relates to the
 12 defendant's forum-related activities; and

13 (3) the exercise of personal jurisdiction must comport with fair
 14 play and substantial justice, i.e., it must be reasonable.

15 *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1205–06 (9th
 16 Cir. 2006).

17 “Purposeful direction,” the first condition³, occurs where the defendant (1) commits
 18 an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the
 19 defendant knows is likely to be suffered in the forum state. *Id.* at 1206 (citing
 20 *Schwarzenegger*, 374 F.3d at 802). This test, which is traceable to the Supreme Court's
 21 decision in *Calder v. Jones*, 465 U.S. 783 (1984), is an effects test that focuses on where
 22 a defendant's acts were *felt*, rather than where they actually occurred. *Yahoo! Inc.*, 433 F.3d
 23 at 1206. The “harm” required need not be the *brunt* of the harm of the defendant's acts. To
 24 the contrary, “[i]f a jurisdictionally sufficient amount of harm is suffered in the forum state,
 25 it does not matter that even more harm might have been suffered in another state.” *Id.* at
 26 1207.

27 ³ The Ninth Circuit distinguished between “purposeful availment” and “purposeful
 28 direction” in *Schwarzenegger*, 374 F.3d at 801. An availment analysis, most often used in
 29 suits sounding in contract, looks for “evidence of the defendant's actions in the forum, such
 30 as executing or performing a contract there.” *Id.* at 802. A direction analysis, most often
 31 used in suits sounding in tort, looks for “evidence of the defendant's action outside the forum
 32 state that are directed at the forum, such as the distribution in the forum state of goods
 33 originating elsewhere.” *Id.* at 803. The Court will use the “purposeful direction” analysis here
 34 because Dr. Tadros' claims are essentially fraud-based, and sound in tort.

1 The second condition — the claim must arise out of the defendant's forum-related
 2 activities — simply means that the defendant's alleged activities must be the "but for" cause
 3 of the claim. *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d 1082, 1088 (9th Cir.
 4 2000).

5 Comportment with fair play and substantial justice, the third condition, requires the
 6 Court to consider several factors, including: (1) the extent of the defendant's purposeful
 7 interjection into the forum state; (2) the burden on the defendant of defending in the forum;
 8 (3) the extent of the conflict with the sovereignty of the defendant's state; (4) the forum
 9 state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the
 10 controversy; (6) the importance of the forum to the plaintiff's interest in convenient and
 11 effective relief, and (7) the existence of an alternative forum. *Id.* at 1088. Each factor must
 12 be considered, and none is dispositive. *Ziegler v. Indian River County*, 64 F.3d 470, 475 (9th
 13 Cir. 1995).

14 2. **General Personal Jurisdiction**

15 General personal jurisdiction, on the other hand, arises when a defendant engages
 16 in "continuous and systematic general business contacts that approximate physical presence
 17 in the forum state." *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1074 (9th Cir.
 18 2011) (internal quotations and citations omitted). "The standard is met only by 'continuous
 19 corporate operations within a state [that are] thought so substantial and of such a nature as
 20 to justify suit against [the defendant] on causes of action arising from dealings entirely
 21 distinct from those activities.'" *King v. Am. Family Mut. Ins. Co.*, 632 F.3d 570, 579 (9th Cir.
 22 2011) (quoting *Int'l Shoe*, 326 U.S. at 318)). The standard for general jurisdiction "is an
 23 exacting standard, as it should be, because a finding of general jurisdiction permits a
 24 defendant to be haled into court in the forum state to answer for any of its activities
 25 anywhere in the world." *Schwarzenegger*, 374 F.3d at 801.

26 B. **Discussion**

27 The burden of establishing that jurisdiction exists falls on Dr. Tadros. *Rio Props., Inc.*
 28 *v. Rio Int'l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002). The burden isn't a heavy one,

1 though. He need only make “a *prima facie* showing of jurisdictional facts to withstand the
 2 motion to dismiss.” *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006).
 3 Uncontroverted allegations in his complaint must be taken as true, and any conflicts between
 4 the facts must be resolved in his favor. *Rio Props.*, 284 F.3d at 1019.

5 It is hard to see how Dr. Tadros could ever establish that the Court has general
 6 personal jurisdiction over the Defendants. They are based in Springfield, Missouri, and Dr.
 7 Tadros pleads no facts to establish that their operations in California, if any, are so
 8 continuous and substantial that they can be said to be physically present here. If this Court
 9 can exercise personal jurisdiction over them, then, it will only be because Dr. Tadros’ claims
 10 actually arise out of Defendants’ conduct in California such that specific jurisdiction exists.

11 But that’s a substantial problem for Dr. Tadros. Specific jurisdiction requires, first, that
 12 Defendants committed some intentional act expressly aimed at California, and that caused
 13 harm they knew was likely to be suffered in California. *Yahoo! Inc.*, 433 F.3d at 1206. In
 14 defining the parties in this case, Dr. Tadros alleges that intentional act in the most conclusory
 15 way possible, completely devoid of factual support. He claims that ACFEI and ACFEII “does
 16 business in the State of California . . . by marketing its products and or services to individuals
 17 in said state.” (FAC ¶¶ 4–5.) With respect to O’Block he alleges the exact same thing.
 18 (FAC ¶ 6.) A conclusory allegation that jurisdiction exists, however, falls far short of the
 19 “*prima facie* showing of jurisdictional facts” that is required. See *Pebble Beach Co.*, 453
 20 F.3d at 1154 (emphasis added). See also *Ashcroft v. Iqbal*, 556 U.S. ----, 129 S.Ct. 1937,
 21 1949 (2009) (holding that a complaint must do more than “tender[] naked assertions devoid
 22 of further factual enhancement”); *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136,
 23 1139 (9th Cir. 2003) (holding that in considering a motion to dismiss a court need not
 24 “necessarily assume the truth of legal conclusions merely because they are cast in the form
 25 of factual allegations”).

26 In the “Statement of Facts” in Dr. Tadros’ complaint, Defendants’ actual contacts with
 27 California become clear, and they are far more limited than Dr. Tadros initially argues. Dr.
 28 Tadros claims that Defendants “have been and continue to be involved in credentialing

1 psychologists DIPLOMATE status, in the State of California and throughout the United
 2 States issuing said credentials for a set fee, through its website <http://www.acfei.com/>.”
 3 (FAC ¶ 13.) But this web-based credentialing doesn’t constitute an intentional act aimed at
 4 California. To the contrary, “[t]hrough said website, a person may become a member filing
 5 an online application and who pays the fee, simply claiming to have a degree and issued
 6 points through a point system in the company.” (*Id.*) In other words, Defendants, from
 7 Missouri, operate a passive website that allows psychologists throughout the country to apply
 8 for a membership credential that they then carry out into their respective fields, where
 9 prospective patients may or may not attach significance to it. While there may be purposeful
 10 direction on the part of the *psychologists* like Dr. Doyne in the forums where they work, there
 11 is no purposeful direction on the part of *Defendants* in those forums simply because
 12 psychologists carry around a membership credential bestowed by them.

13 The analysis would be different if Dr. Tadros could allege that he read an
 14 advertisement targeted at California trumpeting the virtues of ACFEI members and
 15 recommending their services, or if he was personally contacted by an ACFEI representative
 16 and sold on Dr. Doyne as a custody evaluator. But that is not how Dr. Tadros tells it. Dr.
 17 Tadros alleges only that “[i]n reliance on the defendants’ credentials and DIPLOMATE
 18 standing, [he] hired Steven Doyne for a project involving Custody Evaluation as an expert
 19 witness.” (FAC ¶ 15.) He further alleges that “[i]n further reliance on the defendants’
 20 credentialing, [he] paid Doyne \$3,700 for a Custody Evaluation.” (*Id.*) Thus, the only
 21 meaningful connection between Defendants and California is that a California-based
 22 psychologist happened to be a member of Defendants’ organization and listed this among
 23 his professional qualifications. That simply isn’t sufficient purposeful direction on the
 24 Defendants’ part to support the Court’s exercise of personal jurisdiction over them.⁴

25

26 ⁴ In his opposition brief, Dr. Tadros alleges that Defendants “represented” Dr. Doyne
 27 as being a competent custody evaluator and that O’Block “constantly does business in San
 28 Diego including but not limited to, giving marketing seminars and selling his products all over
 the state of California and in this district.” (Dkt. No. 8 at 3.) The nature of this alleged
 representation could constitute purposeful direction, but Dr. Tadros cites to his own affidavit
 in which he offers no additional factual details. He doesn’t explain who made the

1 For the reasons given above, the Court **DISMISSES** Dr. Tadros' complaint, **WITHOUT**
 2 **PREJUDICE**, for lack of personal jurisdiction over the Defendants.

3 **III. Venue**

4 To address, anyway, the parties' dispute over the proper venue for this case, the
 5 Court finds good cause for transfer under 28 U.S.C. § 1404(a).

6 "For the convenience of parties and witnesses, in the interest of justice, a district court
 7 may transfer any civil action to any other district or division where it might have been
 8 brought." 28 U.S.C. § 1404(a). The Ninth Circuit has identified multiple factors a district
 9 court should take into consideration: (1) the plaintiff's choice of forum; (2) the respective
 10 parties' contacts with the forum; (3) the contacts relating to the plaintiff's cause of action in
 11 the chosen forum; (4) the difference between the costs of litigating in the two forums; (5) the
 12 availability of compulsory process to compel attendance of unwilling non-party witnesses;
 13 and (6) the ease of access to sources of proof. *Jones v. GNC Financing, Inc.*, 211 F.3d 495,
 14 498–99 (9th Cir. 2000). The weighing of these factors "involves subtle considerations and
 15 is best left to the discretion of the trial judge." *Commodity Futures Trading Comm'n v.*
 16 *Savage*, 611 F.2d 270, 279 (9th Cir. 1979).⁵ A district may also consider certain so-called
 17 "public" factors, such as the forums' respective familiarity with the applicable law, whether
 18 there is any local interest in the case, and the relative court congestion in the forums. See
 19 *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986).

20 The dispute over venue in this case comes down to just a handful of concerns.
 21 Defendants are based in Missouri, and that's where all of their witnesses and records are.
 22 Moreover, they argue, Dr. Tadros' choice of a forum is entitled to little weight, and Missouri
 23 has a far greater interest in ACFEI's credibility as an organization. Also, Dr. Tadros' claims

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 25 representation, when it was made, what the substance of it was, or anything else. As for the
 26 vague description of O'Block's conduct in San Diego, Dr. Tadros doesn't link it to his actual
 27 claims, which is essential to establishing that *specific* personal jurisdiction exists.

28 ⁵ Typically, before going through the *Jones* factors, a district court would have to
 consider whether a case could have been filed in the district to which the defendant seeks
 to have it transferred. Here, there is no dispute that this case could have been filed in the
 Central District of Missouri.

1 arise mostly out of Defendants' credentialing procedures and their alleged failure to respond
 2 to Dr. Tadros' requests for information, which take or took place in Missouri. Dr. Tadros, on
 3 the other hand, claims that his witnesses and exhibits are all located in southern California,
 4 and that his medical practice and weather-related asthma require that he stay in or close to
 5 San Diego.

6 First, the fact that Dr. Tadros maintains a medical practice in San Diego and has an
 7 easier time staying healthy in warmer climates aren't very relevant considerations under
 8 § 1404(a). Second, Defendants are right about Dr. Tadros' choice of a forum. The Ninth
 9 Circuit has held that a plaintiff's choice of forum is "entitled only to minimal consideration"
 10 where "the operative facts have not occurred within the forum of original selection and that
 11 forum has no particular interest in the parties or the subject matter." *Pac. Car & Foundry Co.*
 12 *v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968); *see also Saleh v. Titan Corp.*, 361 F. Supp. 2d
 13 1152, 1157–58 (collecting cases in which "courts have given less deference to the plaintiff's
 14 choice of forum where the action has little connection with the chosen forum"). This
 15 obviously begs for an analysis of some other § 1404(a) factors — namely, the respective
 16 parties' contacts with the forum *and* the contacts relating to the cause of action in the chosen
 17 forum — but the Court is confident that the "operative facts" in this case are not so tied to
 18 the Southern District of California that the Court should presumptively honor Dr. Tadros'
 19 decision to sue Defendants here. Again, Dr. Tadros' claims arise out of Defendants'
 20 credentialing standards and alleged refusal to furnish certain documents to Dr. Tadros,
 21 conduct that took place in Missouri. (See Compl. ¶¶ 18–26.)

22 Third, many of Dr. Tadros' witnesses who are based in San Diego are *expert*
 23 witnesses, and their convenience is entitled to little consideration. See *Litton v. Avomex Inc.*,
 24 2010 WL 160121 at *15 (N.D.N.Y. Jan. 14, 2010) ("If they are experts, their convenience is
 25 entitled to little or no weight in deciding a transfer motion and their deposition testimony
 26 could be videotaped if personal appearance at trial is impracticable."); *Lentz v. Eli Lilly and*
 27 *Co.*, 464 F.Supp.2d 35, 37 (D. D.C. 2006) (noting that expert witnesses "by virtue of their role
 28 as paid experts must be prepared to travel to testify and are compensated for doing so").

1 Dr. Tadros also claims he will call witnesses who will testify "regarding their personal
2 experiences in the San Diego Court system with child custody evaluators credentialed by the
3 defendants." (Dkt. No. 8 at 6.) Such testimony, however, is not germane to Dr. Tadros'
4 specific claims against Defendants, which arise out of its credentialing standards as they
5 pertain to Dr. Doyne and their alleged refusal to provide Dr. Tadros with certain information.

6 While the Court will refrain from transferring this case to the Central District of
7 Missouri, it will advise Dr. Tadros that having considered the standard for transfer under
8 § 1404(a) it views Defendants' motion as meritorious. If the Court were inclined to exercise
9 personal jurisdiction over the Defendants—and it is not—it would almost certainly transfer
10 this case to the Central District of Missouri.

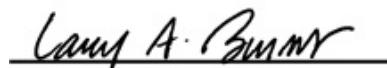
11 **IV. Conclusion**

12 The Court finds it lacks personal jurisdiction over the Defendants. It understands that
13 this doesn't prevent it from transferring this case to the Central District of Missouri, anyway,
14 but it declines to do so in light of the history of this litigation. This is Dr. Tadros' third lawsuit.
15 First he sued Dr. Doyne, and lost. Then he sued ACFEI in state court, and voluntarily
16 dismissed his case. Only after ACFEI sued Dr. Tadros for defamation did he file this lawsuit.
17 If Dr. Tadros truly believes it is in his best interest to continue to litigate with ACFEI, he may
18 re-file this case in some other district. The Central District of Missouri appears to be the
19 most appropriate venue.

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21 **IT IS SO ORDERED.**

22 DATED: March 29, 2012

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24 **HONORABLE LARRY ALAN BURNS**
United States District Judge

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